IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.Rev.Pet.No. 2701 of 2007()

CRA.534/2003 of II ADDL. SESSIONS COURT, TRIVANDRUM
ST.164/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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REVN. PETITIONER: APPELLANT/ACCUSED

NIRMALA, W/O PRAMESWARAN ACHARI,
MAKAYIRAM, ENTHIVILAKATHU VEEDU, ARAYALLOOR,
THIRUMALA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENTS: COMPLAINANT & STATE

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1. S.HARIKUMAR, S/O K.SUKUMARAN NAIR,
LOPI NIVAS, T.C.31/952(3), PUTHEN VEEDU,
PETTAH ROAD, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON 19.07.2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2701 OF 2007

Dated this the 19th day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.164/2002 on the file of the J.F.C.M.-V, Thiruvananthapuram challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The revision petitioner would

contend that eventhough Ext.P1 cheque was dishonoured on 30.11.2000 and PW1 has admitted that the cheque was returned on the same day itself, Ext.P2 dishonour memo is dated only 17.1.2001. Ext.P2 is a subsequently manipulated dishonour memo since if the cheque was returned on the same day it should have been accompanied by a dishonour memo. Ext.P2 dishonour memo has been utilised only for the purpose of saving limitation but for which Ext.P3 statutory notice sent on 19.1.2001 would be beyond time.

4. I am afraid that I cannot agree with the above contentions. PW2 was the Manager of the Drawee bank. No question was put to PW2 as to whether Ext.P1 cheque was presented and dishonoured on 30.11.2000 itself and whether another dishonour memo was issued on that day. On the contrary, PW2 denied the suggestion that Ext.P2 dishonour memo is not genuine. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the finding that the complainant has proved the offence. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision

Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.50,000/- (Rupees fifty thousand only) within three months from today, then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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